THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.8783 of 2006

Dated: 10-07-2006

Between:

Y. Ramababu and another.

..... PETITIONERS

AND

The District Collector, Vizianagaram, and two others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO.8783 of 2006

ORDER:

The two petitioners filed the instant writ petition assailing the letter of the Mandal Revenue Officer (MRO), second respondent herein, dated 14-03-2006 addressed to the third respondent informing that the land in survey No.69 of Vizianagaram was allotted for commissioning of BSNL cell-one-tower. It is the case of the petitioners that they have jointly purchased land admeasuring 226.66 sq. yards under registered sale deed bearing No.39/06 and another extent of land admeasuring 201.16 sq. yards under registered sale deed bearing No.40/06. Both the documents are dated 04-01-2006. They also allege that they have constructed a compound wall surrounding their plots. On 30-03-2006, the third respondent allegedly demolished the compound wall and encroached upon the land. On enquiries they came to know that the second respondent allotted said land to the third respondent. They submitted a representation to the second respondent on 04-04-2006 bringing to his notice about the purchase of said land by them and for necessary redressal. They did not receive any reply and therefore, the present writ petition is filed seeking a writ of Mandamus declaring the action of the second respondent in allotting subject land to the third respondent as illegal and arbitrary.

At the stage of admission itself, the third respondent has filed a counter-affidavit. It is their case that BSNL so as to erect a cell tower made a requisition to the District Collector for allotment of suitable site at Thotapalem. The District Collector allotted land admeasuring 116.16 sq. yards in survey No.69 and the same was communicated to the third respondent by the impugned order. It is also stated that MRO earmarked the site and handed over the same to the third respondent, whereafter BSNL erected fencing around the site. A categorical averment is made that the site without compound wall, which was adjacent to a site with compound wall on one side was handed over to BSNL. The deponent of the affidavit on behalf of BSNL also states that when he made enquiries with the surveyors about the demolished compound wall, the surveyors informed him that the intruders occupied the entire site and that MRO evicted the encroachers duly demolishing the compound wall. The other allegations made by the petitioners are denied. It is also alleged that the land which was handed over to BSNL is comprised in survey No.69 of Vizianagaram, whereas the land purchased by the petitioners is comprised in survey No.70/1c and that the land handed

over to BSNL is a dried up tank.

The controversy in this writ petition is whether the land allotted to BSNL by the revenue department is situated in survey No.69 or 70.

The petitioners' plot under two registered documents is comprised in survey No.70/1 whereas the land which was handed over by MRO to BSNL is allegedly in survey No.69. Both the plots are situated adjacent to each other and therefore, there would not be any difficulty for clearly alienating the private property of the petitioners and the government land which was handed over to BSNL. This can be sorted out by MRO by personally taking up survey in the presence of the petitioners as well as the representative of BSNL.

Accordingly, the writ petition is disposed of directing MRO, second respondent herein, to conduct survey of the disputed area as indicated hereinabove and pass appropriate orders in the matter. This exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Till then *status quo* obtaining as on today shall be maintained. No costs.

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V.V.S.RAO, J

10th July 2006

Note: Issue CC in three days.

B/o

ghn